IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)
WEDNESDAY, THE SIXTEENTH DAY OF JUNE
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE MR JUSTICE K.C. BHANU
WRIT PETITION NO : 1207 of 1995

Between:
M.Bhagavanthu S/o.M.Satyanarayana
R/o.H.No.2-55,Makthal Mahabubnagar Dist.

..... PETITIONER

AND

1 The Labour Court-III at Hyderabad Rep.by its Presiding Officer
"Chandra Vihar Buildings" 4th Floor,M.J.Road
Hyderabad.
2 The Asst.Engineer A.P.State Irrigation Development Coop.Ltd.,
Makthal Sub-Division Mahabubnagar Dist.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records from the 1st respondent and issue a writ, order or direction particularly one in the nature of Writ of Certiorari and quash the award passed by the 1st respondent in I.D.No.48/92 (old I.D.No.75/87), dated 1-12-1993 published on 5-7-1994 disallowing the petitioner's claim for reinstatement into service, with continuity of service, back-wages and all other attendant benefits, holding the same as illegal, unjust, contrary to law and perverse and grant him the relief of reinstatement into service, with continuity of service, full back-wages and all other attendant benefits in the interest of justice and fair-play.

For the Petitioner: MR.A.K.JAYAPRAKASH RAO, Advocate

For the Respondent No.1: The Govt. Pleader for Labour

For the Respondent No.2: Mrs. P.Balarani, Advocate

The Court Made the Following :

HONOURABLE SRI JUSTICE K.C.BHANU

W.P.No.1207 of 1995

ORAL ORDER:

Questioning the award, dated 1.12.1993 in I.D.No.48 of 1992, passed by the Labour Court III, Hyderabad, this writ petition is filed.

The brief facts that are necessary for the disposal of the writ petition are as follows:

The writ petitioner was appointed as Watchman by the respondent-corporation on 1.4.1982 on a monthly salary of Rs.350/- and he continued to work as Watchman from 1.4.1982 to 21.5.1983. While so, his services were orally terminated on 21.5.1983 and again he was given employment on 1.5.1985 and worked continuously upto 30.6.1986. But, on 1.7.1986, his services were again terminated. Therefore, he raised Industrial Dispute in the year 1987. To substantiate the case of the workman, one witness was examined and one document was marked. On behalf of the respondent-corporation, one witnesses was examined and 12 documents were marked. Upon appreciation of the evidence on record, the Labour Court, Hyderabad, gave a finding that the petitioner worked only from 1.4.1982 to 21.5.1983 but not for the subsequent period and therefore, the petitioner worked for more than 240 days but the respondent-corporation has not followed Section

25(F) of the Industrial Disputes Act, 1947 (for short "The Act") and ordered pay as prevailed in 1983 and retrenchment compensation with 12% interest and also to pay additional compensation of Rs.2000/-. Having not satisfied with the said award, the writ petition is filed claiming reinstatement and other attendant benefits.

The learned counsel appearing for the writ petitioner contended that the Tribunal has found that the respondent-corporation has not followed Section 25(F) of the Act and therefore, the consequences are for reinstatement of the petitioner. He also contended that in certain exceptional cases, compensation can also be given, but in the instant case even the compensation awarded is very low. Hence, he prays to enhance the compensation.

On the other hand, the learned standing counsel appearing for the respondents contended that the scheme under which the petitioner worked was not available and the schemes of the respondent-corporation were entrusted to the beneficiaries and therefore, the question of reinstatement does not arise. Considering the fact that the petitioner worked only for a period of one year, the Tribunal rightly awarded Rs.2000/- as additional compensation and there are no grounds to interfere with the order of the Tribunal.

Almost all the facts are not in dispute. The only point involved in this writ petition is with regard to the consequences for violation of Section 25(F) of the Act. The findings are not shown to be perverse or not based upon any legally acceptable evidence so as to call for interference by this Court.

The learned counsel for the respondents herein further

contended that there is delay of 5 years for the petitioner to approach the Tribunal and therefore, the petitioner is not entitled to question the order of the Tribunal.

The counsel for the writ petitioner relied upon a decision reported in **GURMAIL SINGH Vs. PRINCIPLA, GOVT. COLLEGE OF EDUCATION**[1] wherein their Lordships held as follows:

> *"As laid down by this Court in the case of Ajaib Singh v. Sirhind Cooperative Marketing-cum-Processing Service Society Ltd. & Anr., (1999-I-LLJ-1260) (SC), if the order of dismissal is challenged belatedly, the dispute would still continue for adjudication,……".*

Therefore, merely because the petitioner raised a dispute after a lapse of 5 years, it cannot be a ground to dismiss the petition under Section 25(F) of the Act. This aspect has already been considered by the Tribunal. With regard to the consequences of violation of Section 25(F) of the Act, Section 25(F) reads as follows:

> *"25-F. Conditions precedent to retrenchment of workmen:- No workman employed in any industry who has been in continuous service front less than one year under an employer shall be retrenched by that employer until-*
>
> *a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workmen has been paid in lieu of such notice, wages for the period of the notice.*
>
> *b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and*
>
> c) *Notice in the prescribed manner is served on the*

appropriate Government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette).

The counsel for the writ petitioner relied upon another decision reported in **STATE BANK OF INDIA Vs. SUNDARAMONEY**[2] wherein their Lordships held as under:

"What follows? Had the State Bank known the law and acted on it, half a months pay would have concluded the story. But that did not happen and now, some years have passed and the Bank has to pay, for no service rendered. Even so, hard cases cannot make bad law. Reinstatement is the necessary relief that follows."

The learned counsel for the petitioner further relied upon another decision reported in **SAIN STEEL PRODUCTS Vs. NAIPAL SINGH**[3] wherin their Lordships observed as follows:

"Considering the fact that the respondent has not been in employment of the appellant since 1975 for well over quarter of a century, we do not think it appropriate to put him back in service of the appellant. It would be proper that some reasonable compensation be paid to him in lieu of back wages and reinstatement."

In this case also the question of reinstatement may not arise because the schemes under which the petitioner was appointed as workman or watchman are not available at

present. All the schemes are being entrusted to the beneficiaries. In view of the fact that no workman is working with the respondent-corporation, the Tribunal rightly rejected reinstatement of the petitioner into service.

A categorical finding has been given that there was no compliance with the conditions of Section 25(F) of the Act. The petitioner worked for more than a year as Watchman in the respondent-organization. So, considering the facts and circumstances of the case, the amount granted towards additional compensation can be enhanced because the writ petitioner cannot be reinstated into service. Considering the totality of circumstances such as the period of service put in by the petitioner, the financial position of the Corporation, etc., it is appropriate to enhance the additional compensation. Accordingly, the additional compensation is enhanced from Rs.2000/- to Rs.7000/-. The 2nd respondent-corporation herein shall pay the said amount to the petitioner within a period of two months. If any amount is paid to the petitioner towards additional compensation by the 2nd respondent-corporation, the same shall be deducted.

In the result, the writ petition is partly allowed. In the circumstances of the case, there shall be no order as to costs.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Wednesday, the Sixteenth day of June, Two Thousand and Four.

ASSISTANT REGISTRAR

16th June, 2004

//TRUE COPY//

SECTION OFFICER

bcj/mvb

To

1. The Presiding Officer,
   The Labour Court-III,
   "Chandra Vihar Buildings", 4th floor,
   M.J.Road, Hyderabad
2. The Asst. Engineer,
   A.P.State Irrigation Development Corp. Ltd.,
   Makthal Sub-Division
   Mahabubnagar Dist.
   P.T.O
3. Two C.Cs. to Govt. Pleader for Labour, High Court A.P. Buildings, Hyderabad (OUT)
4. Two C.Ds.

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[1] 2000(1) LLJ SC 1080

[2] 1976(1) LLJ SC 478

[3] 2001(1) LLJ SC 1345